

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SONIA HERNANDEZ and FREDDY
HERNANDEZ, JR.,

Defendants.

4:14-CR-3114

MEMORANDUM AND ORDER

This matter is before the Court on the defendants' objections (filing 74) to the Findings, Recommendation, and Order (filing 64) of the Magistrate Judge Cheryl R. Zwart, recommending that the defendants' motions to suppress (filings 40 and 42) be denied.¹ The Court has conducted a de novo review of the defendants' motions to suppress, pursuant to 28 U.S.C. § 636(b)(1). The Court concurs in Magistrate Judge's factual findings, analysis, and conclusions of law, and finds the defendants' objections to be without merit. The Court will therefore adopt the Findings and Recommendation. The Magistrate Judge has accurately set forth the relevant facts and law, and so the Court writes only briefly, to address the matters raised in the defendants' objections.

Assuming that the traffic stop was (prior to defendants consenting to wait for a drug dog to arrive) unreasonably prolonged, the Court finds that Trooper Pelster had developed reasonable suspicion sufficient to justify prolonging defendants to investigate. The Court further finds that both defendants consented to wait for a drug dog to arrive, and that any detention beyond that period was, in fact, consensual.

The defendants have focused much of their briefing on *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), a case which was decided shortly before the Magistrate Judge issued her Findings and Recommendation, and which the defendants had not previously had an opportunity to brief. But *Rodriguez*

¹ More specifically, the defendant Freddy Hernandez Jr. has filed an objection (filing 74). The defendant Sonia Hernandez has filed a Motion for Leave to join in her co-defendant's objections. Filing 76. Sonia Hernandez's motion for leave will be granted, in that she will be permitted to join in her co-defendant's objections.

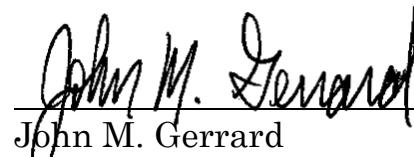
does not alter the Court's conclusion. That case addressed "whether police routinely may extend an otherwise-completed traffic stop, *absent reasonable suspicion*, in order to conduct a dog sniff." *Id.* at 1614 (emphasis supplied). As the Court has explained, Trooper Pelster had developed reasonable suspicion prior to any detention becoming unreasonably prolonged, and thereafter, defendants consented to wait for the drug dog to arrive. Accordingly, the Court finds defendants' objections to be without merit.

THEREFORE, IT IS ORDERED:

1. Defendant Sonia Hernandez's Motion for Leave to join in her co-defendant's objections (filing 76) is granted.
2. The Court adopts the Magistrate Judge's Findings and Recommendation (filing 64).
3. The defendants' objections (filing 74) are overruled.
4. The defendants' motions to suppress (filings 40 and 42) are denied.

Dated this 20th day of July, 2015.

BY THE COURT:


John M. Gerrard
United States District Judge